

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2929

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2929, entitled "A Bill for an Act Relating to Workers' Compensation."

The purpose of this bill is to revise the conduct of independent medical examinations and permanent impairment ratings by requiring the use of physicians who are mutually agreed upon by the employer and the employee, and if no agreement can be reached between them, then establishing a process for the appointment of a physician by the Director of Labor and Industrial Relations ("Director"). The bill also requires that the Director order no more than one independent medical examination or impairment rating unless valid reasons exist regarding the employee's medical treatment.

This bill is objectionable because the independent medical evaluation process under the current law is an important means by which the employer is able to determine the medical progress of a case. Current law requires full disclosure of the independent medical evaluation report so the injured worker is afforded the opportunity to challenge the report.

This bill eliminates the right of the worker to have a physician present during the examination. Further, the seven-day period in the bill is ambiguous as to whether it applies to the time period within which a physician must accept an appointment or the time period for the Director to appoint a

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 2929
Page 2

physician. The five-year requirement in subsection (b) of the bill is ambiguous as to whether it applies to the claimant or the physician. The bill also redefines certain terms in a manner that conflicts with Hawaii Administrative Rules, thus opening the potential for litigation.

I am concerned that this measure would be a detriment to the employee receiving good medical advice. There may not be an adequate number of physicians willing to have their names placed on the list due to the time constraints imposed on the doctors to respond and perform the examinations. Further, the requirement that only the attending physician determine medical stability may limit the opportunity to have a permanent impairment rating performed by a knowledgeable expert to resolve the case and advise the employee what work he or she can perform for the remainder of his or her employable lifetime.

It should be noted that the current process for the selection and payment of an independent medical examiner has worked well for many years and correctly recognizes that employers, who bear the burden of paying workers' compensation benefits, should be responsible for the medical examination that assesses the employee's recovery progress.

For the foregoing reasons, I am returning House Bill No. 2929 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Lingle", written over the printed name.

LINDA LINGLE
Governor of Hawaii